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CRAVATH, SWAINE & MOORE

RECORDATION NO. Filed 1425

ONE CHASE MANHATTAN PLAZA

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RECORDATION NO.

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. Filed 1425

APR 4 1979 -1 40 PM

INTERSTATE COMMERCE COMMISSION

Burlington Northern Inc.Lease Financing Dated as of February 1, 19799.70% Conditional Sale IndebtednessDue July 1, 1995

[CS&M Ref.: 2164-082]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement No. 1 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders;

(b) Agreement and Assignment No. 1 dated as of February 1, 1979, between General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent;

2(c) Lease of Railroad Equipment No. 1 dated as of February 1, 1979, between Burlington Northern Inc. and The Connecticut Bank and Trust Company, as Trustee; and

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APR 11 1979

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN

JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON

INTERSTATE COMMERCE COMMISSION

COUNSEL

ROBERT L. GILPATRICK
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

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APR 4 1979 -1 40 PM

INTERSTATE COMMERCE COMMISSION

9-094A301

No.

Date APR 4 1979

Fee \$1.00

ICC Washington, D. C.

CARLYLE E. MAW
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901

CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C. 2

April 4, 1979

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ET Bryan
New Member

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(b) Assignment of Lease and Agreement No. 1 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee:

The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Owner-Trustee, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of:

One hundred and one (101) GMC-EMD 3,000 h.p. Model SD-40-2 diesel-electric locomotives bearing identifying numbers BN 7161-7166, 7889-7923, 8030-8089, inclusive; and

Thirty-one (31) GE 3,000 h.p. Model C30-7 diesel-electric locomotives bearing identifying numbers BN5000-5012 and 5582-5599, inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich

As Agent for Burlington Northern Inc.

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Mr. H. G. Homme, Jr.,
Secretary.

Encls.

G

RECORDATION NO. 10255/A Filed 1425

[CS&M Ref. 2164-082]

APR 4 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

**AGREEMENT AND ASSIGNMENT
No. 1**

Dated as of February 1, 1979

BETWEEN

**GENERAL MOTORS CORPORATION
(Electro-Motive Division),
GENERAL ELECTRIC COMPANY**

AND

**MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
*As Agent***

AGREEMENT AND ASSIGNMENT No. 1 dated as of February 1, 1979, between GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement No. 1 dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the Assignee.

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, acting as Trustee (the "Owner-Trustee") under a Trust Agreement No. 1 dated as of the date hereof (the "Trust Agreement") with the parties named in Appendix II to the Participation Agreement (severally an "Owner" and collectively the "Owners"), have entered into a Conditional Sale Agreement No. 1 dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Owner-Trustee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Owner-Trustee and Burlington Northern Inc. (the "Lessee") have entered into a Lease No. 1 dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Owner-Trustee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Owner-Trustee to such Builder under the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner-Trustee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Owner-Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Owner-Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all

Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Owner-Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Owner-Trustee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee, the Conditional Sale Agreement is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Builder therein or in its Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

Vice President

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

GENERAL ELECTRIC COMPANY

by

~~General Manager—Domestic~~
~~Locomotive Marketing Department~~

[Corporate Seal]

Attest:


Attesting Secretary


MANAGER-MARKETING
LOCOMOTIVE MARKETING DEPARTMENT

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent

by

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of February 1, 1979.

THE CONNECTICUT BANK AND
TRUST COMPANY, not in its individual
capacity but solely in its capacity as Trustee,

by

Authorized Officer

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of , 1979, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this 22nd day of MARCH , 1979, before me personally appeared J.M. KIRKER ~~MANAGER - MARKETING LOCOMOTIVE MARKETING DEPARTMENT~~ to me personally known, who being by me duly sworn, says that he is a General Manager - Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Collette Wronsek, Notary Public
Lawrence Park Twp., Erie Co., Penna.
My Commission Expires Feb. 10, 1983

Collette Wronsek
Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss.:

On this day of , 1979, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission expires